* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ITA No.582/2011

Date of Order: 23.08.2011

Commissioner of Income Tax **… Appellant**

Through: Mr. N.P. Sahni, Advocate

Versus

RAJINDER KASHYAP **…… Respondent**

Through: None.

AND

+ITA No.670/2011

Commissioner of Income Tax **… Appellant**

Through: Mr. N.P. Sahni, Advocate

Versus

KASHYAP MOTORS PVT. LTD. **…… Respondent**

Through: None.

AND

+ITA No.627/2011

Commissioner of Income Tax **… Appellant**

Through: Mr. N.P. Sahni, Advocate

Versus

RAJINDER KASHYAP **…… Respondent**

Through: Mr.P.C. Yadav, Advocate

AND

+ITA No.673/2011

Commissioner of Income Tax **… Appellant**

Through: Mr. N.P. Sahni, Advocate

Versus

M/S KASHYAP MOTORS PVT. LTD. **…… Respondent**

Through: None.

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not ? No
3. Whether the judgment should be reported in the Digest ? No.

M.L. MEHTA, J. (Oral)

1. These four appeals are directed against a common order dated 6th August, 2010 passed by Income Tax Appellate Tribunal ("ITAT" for short). Vide this common order, four cross appeals filed by the assessee as well as by revenue against the order dated 27th April, 2007 of CIT (A) for the block period 1st April, 1989 to 22nd December, 1999 under Section 158BC of the Income Tax Act ("the Act" for short) were disposed of against revenue and appeals filed by assessee were allowed.

2. Succinctly stating the facts are that search and seizure operation was carried out under Section 132A in the case of M/s Kashyap Motors Private Limited on 22nd December, 1999 and on subsequent dates. One of the assessees i.e. R. Kashyap, was the Managing Director of the said company M/s Kashyap Motors Private Limited at the relevant time. The Assessing Officer (AO) made some additions on substantive basis and some on protective basis and computed the undisclosed income qua both the assessees. Before passing the assessment order, AO passed order for special audit on 18th February 2000 under Section 142(2A) of the Act, *inter alia,* directing the special auditor to furnish audit report by 15th July, 2002 i.e. within 148 days. Thereafter, AO suo motu passed order under Section 142(2C) of the Act extending the time for furnishing

special audit report from 15th July, 2002 to 16th August, 2002. Before CIT(A), two grounds were raised namely (i) the assessment being time-barred on the plea that the panchnama mentioned in Explanation-2(a) to Section 158 BE is a panchnama which is drawn on the conclusion of the search and panchnama drawn subsequently on 14th January 2000 and 19th December 2000 were in fact invalid panchnama and could not be the basis for calculating limitation; (ii) the AO had no power to suo motu extend the time for special audit report before the Amendment of 1st April, 2008 in the Finance Act, 2008. The CIT (A) allowed the appeals of the assessee on both these legal grounds. The Tribunal vide the impugned order maintained the orders passed by CIT (A) on both the grounds. The present appeals are filed by the revenue challenging the impugned order of the Tribunal.

3. While holding that the panchnama of 22nd December 1999 was only a panchnama relating to search and was relevant for computing limitation under Section 158BC (b) of the Act and that being so, the assessment as done on 27th June, 2003 was time-barred, the Tribunal reasoned in following terms:

> *"8. In the instant case before us, there is no dispute with regard to the dates of search and various panchnamas prepared on 22.12.1999, 14.1.2000 and 19.12.2000. The examination of the panchnama placed on record clearly shows that on 22.12.1999, complete inventory of each item was prepared which is evident from the annexures annexed to the panchnama. There*

was no action from 22.12.1999 till 14.1.2000, when again some inventory was prepared after releasing some liquors. Further, there was no action for more than 11 months and it was only on 19.11.2000 that foreign currency as inventorized on 22.12.1999 was taken away and panchnama was drawn. The plain reading of the ratio laid down in the Hon'ble Jurisdictional High Court decisions as referred above clearly indicates that panchnama mentioned in Explanation 2(a) to Section 158BE is a panchnama which is drawn on the conclusion of the search. If the panchnama does not reveal that a search was at all carried out on the day to which it relates, then it would not be a panchnama related to a search and consequently, it would not be panchnama of the type which finds mention in the said Explanation 2(a) to Section 158BE. In the instant case before us, neither the panchnama dated 14.1.2000 nor dated 19.12.2000 shows that any search was conducted on that day and only depicting revocation of restraint order mentioned in panchnama dated 22.12.1999. Thus, it was the only panchnama dated 22.12.1999 which related to the conclusion of search and relevant for computing limitation u/s 158 BE (I) (b). Hence, the assessment framed on 27.06.2003 was time barred.

4. We do not find any infirmity or illegality in the findings recorded by the Tribunal as well as by CIT(A) on the above issue.

5. With regard to the issue relating to suo motu grant of extension of time for special audit under Section 142(2C) of the Act by the AO, the Tribunal reasoned as follows:

> *"11. In view of the detailed discussion made hereinabove by referring to the order of the Tribunal in the case of Bishan Saroop Ram Kishan Agro Pvt. Ltd., the issue is now covered in favour of assessee in view of the amendment carried out to Section 142(2A) and the CBDT Circular No.I dated 27.3.2009. These amendments and Circular were elaborately considered in the case of Bishan Saroop Ram Kishan Agro Pvt. Ltd by the Delhi Tribunal in its order dated 18.9.2009, wherein it was held that before 1.4.2008 i.e. before amendment, the AO does not have the power to extend the time period suo-moto and limitation has to be computed with reference to the original period granted for special audit. The facts of these cases are identical to the facts discussed by the Tribunal in the above orders. Accordingly, we hold that assessment order passed by the AO in both the cases are barred by limitation on both the counts."*

6. We do not find any infirmity in the findings recorded by the Tribunal on this issue as well.

7. There were similar issues before us in the case of ***CIT* v *Bishan Saroop Ram Kishan Agro Pvt. Ltd. And others*** (ITA No.1775/2010 decided on 27th May, 2011) while discussing the judgments of various

High Courts and not agreeing with the decision of Punjab and Haryana High Court in the case of ***Jagjit Sugar Mills Company Ltd v CIT*** 210 ITR 468 (Punjab and Haryana), we reasoned as under:

> *"17. The Memo explaining the provisions of Finance Bill, 2008 and also Circular No.1 dated 27th March, 2009 of CBDT as reproduced hereinabove would clearly bring out that sub section (2A) to (2D) of Section 142 deal with the powers of the Assessing Officer to order for special audit and the same was to be exercised by him having regard to the nature and complexity of the account of the assessee and the interest of the revenue.*
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> *18. The word "and" appearing before the words "for any good and sufficient reasons" in the proviso to sub section (2C) by any stretch of interpretation could not be read as "or". The fact that the words "suo motu" have been added by way of an amendment with effect from 01.04.2008 would show the legislative intention in the proviso as existed before the amendment which is that the Assessing Officer prior to amendment had no power to extend the period of furnishing audit report of his own.*
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> *19. It was to rationalize the said proviso that the word "suo motu" came to be added by way of amendment with effect from 1st April 2008. As per Clause 27.3 of the Circular dated 27th March, 2009 while the Assessing Officer shall continue to have the power to grant extension on an application made in this behalf by the Assessee, he could also grant extension of his own when there are good and sufficient reasons for such extension. Thus, it is noticed that sub section (2C)*

before the amendment did not empower the Assessing Officer to extend the time for submissions of special audit report under sub Section (2A). Further, the power of extension of time for submission of special audit report is also subject to limitation of a period of 180 days from the date on which the directions under section 142(2A) of the Act for the audit was received by the Assessee. It is an admitted fact that in the present case, the assessee had not made any application for extension of period of audit report. Therefore, the extension which was granted by the Assessing Officer on the request of the Auditor could be taken to be a suo motu action of the Assessing Officer which power, as noted above, was not available with the Assessing Officer prior to the amendment with effect from 1st April, 2008. Not only this, said power of extension was also further controlled in the words, "for any good and sufficient reasons". This would mean that the Assessing Officer was supposed to record reasons for granting extension on his own. Clause 27.4 of the Circular also clarifies that this amendment has been made applicable with effect from 1st April, 2008 and it is from this date onwards that the Assessing Officer shall have power to extend the period of furnishing of special audit report suo motu.

20. In the light of interpretation of the proviso as is existed before or after the amendment and the legislative intent behind the amendment as gathered from the memorandum and the circular noted above, we are not persuaded to agree with the interpretation as given by the Punjab and Haryana High Court in the case of ***Jagjit Sugar Mills Company Limited*** *(supra). Further in view of our above discussion, it comes to be*

concluded that the Tribunal was correct in holding that the Assessment Order was barred by limitation. That being so, we answer Question No.1 in affirmative in favour of the Assessee and against the revenue.

21. In view of foregoing discussion that the amendment whereby the word „suo motu" were inserted in sub section (2C) of Section 142 of the Act was to be applicable with effect from 1st April, 2008 only, the amendment cannot be said to be clarificatory or retrospective in nature. The amendment was prospective and was to be applicable with effect from 1st April, 2008 only. Accordingly, we answer Question No.2 against the revenue."

8. In view of the above discussion, we not find any merits in these appeals. The same are hereby dismissed. However, there shall be no orders as to costs.

M.L. MEHTA
(JUDGE)

A.K. SIKRI
(JUDGE)

August 23, 2011
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